this rule on account of the peculiar character of rent.[14] In the case of *In re D. Levy & Sons Co.* (D. C. D. Md. 1913) 208 Fed. 479, it was held that one employed under a year's contract for a stipulated weekly wage could not prove against the estate of his bankrupt employer a claim for installments of salary not earned at the time of the filing of the petition. As the employer's liability would have become absolute and the claimant's damages definitely ascertainable within a year after the adjudication, it would seem that the rule suggested should apply and that proof of the claim should have been allowed at the time when it matured.[15]

CONTEMPT BY PUBLICATION.—There seems to be no doubt that the courts' power summarily to punish for contempt is founded in the necessity for self-preservation.[1] The delicate task of defining it has nowhere caused the judges more perplexity than in determining the status of "outdoor" criticism of the judiciary. The English courts, proceeding on the theory that they represent the crown and are clothed with his royal authority, have determined that they possess the power to punish as a contempt any publication tending to bring a judge into ridicule.[2] Some American courts have reached the same result, asserting that a publication which they deem libelous on themselves tends to bring the administration of justice into disrepute and to diminish public confidence in the courts.[3] The efficacy of summary punishment in compelling respect for courts may well be doubted and it is not improbable that the effect of the existence of this weapon in the hands of the judiciary is more than offset by the popular antagonism often aroused by its exercise.[4]

By the weight of American authority this unlimited and arbitrary power, lodged in a governmental agency and relic of a theory of government by divine right, is thought to be at variance with the spirit

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[14]Rent is an obligation arising out of the possession and enjoyment of land and does not constitute a debt until such possession and enjoyment takes place. *In re* Arnstein (D. C. 1899) 101 Fed. 706; see Deane *v.* Coldwell (1879) 127 Mass. 242. Only rent, therefore, which has accrued at the time of filing the petition, is provable under § 63a (1) which specifies that debts alone may be proved.

[15]*In re* James Dunlap Carpet Co., *supra.*

[1]State *v.* Morrill (1855) 16 Ark. 384. See *Re* Gompers (1913) 40 App. D. C. 293.

[2]Rex *v.* Almon (1765) Wilm. Opin. 243, 8 St. Tr. 54. See 24 Law Quar. Rev. 184, 266.

[3]State *v.* Morrill, *supra;* Burdett *v.* Commonwealth (1904) 103 Va. 838; *In re* Cheeseman (1886) 49 N. J. L. 115; See *In re* Chadwick (1896) 109 Mich. 588. See note in 50 Am. St. R. 572.

It is to be noted, however, that fair comment and criticism of a court's acts often tend toward the same result, and were indeed formerly considered punishable for this very reason. See Trial of Smith (1680) 7 St. Tr. 931. See note 15.

[4]Stuart *v.* People (1842) 4 Ill. 395. While technically it is the court's reputation the judge is vindicating, and not his own, Patterson *v.* Colorado (1907) 205 U. S. 454, his personal interest may predominate. Popularly, he has always been considered as sitting in his own cause. See State *ex rel.* Atty. Genl. *v.* Cir. Ct. (1897) 97 Wis. 1.

of our democratic institutions.[5] The right of public discussion and condemnation of the acts of public officers, not excluding judges, must be deemed superior to the common law prerogative, particularly since it is essential to a proper exercise of the suffrage.[6] Indeed it would emasculate the constitutional guaranty of a free press to declare that this right depends upon the discretion of the person criticized.[7] Publications may, it is true, exceed the bounds of fair comment: the law of libel then provides a proper criminal and civil remedy upon a verdict by a jury.[8] That some power summarily to punish obstructions to the rendering of a just and independent judgment or verdict is indispensible cannot be denied.[9] But in view of the fact that this power should logically be no greater than that necessary to safeguard the essential functions of the court, the only proper occasion for its exercise should be in punishing a direct interference with the orderly and impartial course of justice.[10]

From the common law theory it necessarily follows that no distinction can be made between publications regarding cases pending and those with respect to matters finally adjudicated.[11] But where the sole test is interference with the administration of justice, obviously a criticism, however libelous on the judge, with respect to decisions already made, should not be treated as a contempt.[12] On the other hand, where judicial action is yet to be taken,[13] publications designed to influence such action whether by charges of corruption or threats of disclosure, manifestly render the court incapable of deciding the case in an unbiased frame of mind, and therefore constitute a contempt.[14]

As a result of popular clamor following the summary commitment of publishers of libels on judges, statutes have generally been enacted

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[5]Stuart *v.* People, *supra;* State *ex rel.* Atty. Genl. *v.* Cir. Ct., *supra.*

[6]*Ex parte* Hickey (Miss. 1844) 4 Sm. & M. 781; *In re* Shannon (1891) 11 Mont. 67.

[7]While it is true that the guaranty must be construed with reference to the common law, the changed relation of the people to the government necessarily results in greater rights of discussion for the people, see 2 Stephen, Hist. Crim. Law 299, even without considering the development of public opinion. See *Ex parte* McLeod (1903) 120 Fed. 130. Furthermore, the constitutional guaranty of a public trial would not achieve its object if no criticism could ensue.

[8]Cheadle *v.* State (1886) 110 Ind. 301; see *Ex Parte* Creasy (1912) 243 Mo. 679. The degradation and loss of authority following a private prosecution probably result in making a dignified silence the most effective answer.

[9]State *v.* Rosewater (1900) 60 Neb. 438.

[10]*In re* Pryor (1877) 18 Kans. 72; *In re* Shannon, *supra;* see State *v.* Tugwell (1898) 19 Wash. 238; *Ex parte* McLeod, *supra.*

[11]McLeod *v.* St. Aubyn, L. R. [1899] A. C. 549; Queen *v.* Gray, L. R. [1900] 2 Q. B. 36.

[12]Storey *v.* People (1875) 79 Ill. 45; *In re* Shannon, *supra;* see Patterson *v.* Colorado, *supra,* 463; Cheadle *v.* State, *supra; Ex parte* Greene (1904) 46 Tex. Crim. Rep. 576; State *ex rel.* Atty. Genl. *v.* Cir. Ct., *supra.*

[13]Until a petition for a rehearing is denied or the remittitur has been sent to the trial court, the case is deemed to be pending. McDougal *v.* Sheridan (1913) 23 Idaho 191; *In re* Fite (1912) 11 Ga. App. 665.

[14]Res. *v.* Oswald (1788) 1 Dall. 319; Sturoc's Case (1869) 48 N. H. 428; State *v.* Bee Pub. Co. (1900) 60 Neb. 282; Cooper *v.* People (1889) 13 Colo. 337; Globe Newspaper Co. *v.* Commonwealth (1905) 188 Mass. 449.

to prevent courts from stifling criticism.[15] But where the court is created by a constitution, these statutes have sometimes been regarded as an unconstitutional encroachment on the co-ordinate sphere of the judiciary.[16] The lower federal courts are, however, creatures of Congress and subject to the limitations it may impose. In the recent case of *United States* v. *Huff* (D. C. Ga. 1913) 206 Fed. 700, the defendant was adjudged in contempt for sending threatening and defamatory letters to a federal judge with reference to action to be taken by the judge in a pending case. Rev. Stat. § 725 limits the power of a judge to punish for contempt in such cases to "misbehavior in the presence of the court or so near thereto as to interfere with the administration of justice". But the courts have uniformly maintained that physical nearness is not the criterion and that the section refers to all acts wherever committed whose natural tendency is to interfere with the administration of justice.[17] Whatever may be thought of the soundness of this construction, as construction, the result reached is eminently desirable, and puts the power to punish for contempt upon its proper basis.

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[15]The commitment for contempt of one Lawless, an attorney, for publishing a fair criticism of an opinion by Judge Peck, led to the impeachment of the latter and the passage in 1831 of the federal statute, now Revised Statutes § 725; see *Ex parte* McLeod, *supra.*

[16]State *v.* Morrill, *supra;* State *v.* Shepherd (1903) 177 Mo. 205, overruled in *Ex Parte* Creasy (1912) *supra,* the latter holding that the legislature may regulate but not abridge the court's power to punish for contempt. See Thomas, Constr. Contempt (1904) 72.

[17]See Myers *v.* State (1889) 46 Oh. St. 473; United States *v.* Anonymous (1884) 21 Fed. 761.